



When Your Foundation's Only Director *Dies*

*Lessons from In re Stephen A. Marks
Foundation, and the audit every charitable-
corporation practice should run before
year-end.*

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EXECUTIVE SUMMARY

Five things to *change* by year-end

*On April 16, 2026 the Delaware Court of Chancery issued **In re Stephen A. Marks Foundation** — the first meaningful Delaware guidance in years on §205 standing for charitable nonstock corporations and on the outer limits of retroactive ratification. The opinion reads narrow on its face. It is broad on its implications for every practice with a charitable foundation on the roster.*

- I. Membership in a Delaware nonstock corporation is not inheritable. Personal-representative status does not make you a member of your decedent's foundation. If your client's charter does not say so expressly, the default rule from *Wier* applies — and the standing class is empty the moment the founder dies.
- II. Sole-director foundations are governance-fragile. A sole director who dies leaves the foundation with no one with legal authority to act — not the spouse, not the personal representative, not the institutional trustee. The board cannot ratify because there is no board.
- III. Retroactive validation has an outer limit. Section 205 does not let the Court backdate an act to a date earlier than the date the ratifying authority was appointed. In Master Wright's memorable phrase, doing so "would not be validation, it would be time travel."
- IV. The Delaware Attorney General will appear. The DE DOJ's *parens patriae* role over charitable assets is alive and well. Plan as though the AG will be at the table whenever charitable governance is at issue.
- V. The path forward exists, but it is expensive. Footnote 48 confirms that a party with standing can petition for prospective appointment, after which the validly-seated board can use §204 to ratify defective acts as of the date they occurred. Cleanest available path — not the cheapest one. Prevention costs a fraction.

CLIENT ALERT · READY TO SEND

ADAPT TO HOUSE STYLE

When Your Foundation's Only Director Dies: Delaware Chancery Warns Against DIY Fixes

Last week the Delaware Court of Chancery issued a decision every founder of a private charitable foundation should know about. In [In re Stephen A. Marks Foundation](#), the Court denied a petition to retroactively validate actions taken by a would-be director who had never actually been elected, illustrating a governance trap that can catch well-meaning surviving family members.

The founder of a Delaware nonstock 501(c)(3) foundation was the sole director. He died in 2022. For nearly a year, no one had legal authority to act for the foundation. The founder's widow, serving as personal representative of his estate, made \$80,000 in grants from the foundation's assets — without director authority. Two years after that, she held a meeting with herself, purported to elect herself director, and filed a petition asking the Chancery Court to retroactively validate everything back to the date of her first unauthorized donation.

The Court said no. Twice. First, the widow lacked standing: membership in a Delaware nonstock corporation is not inheritable. Personal representative status does not make you a member of your decedent's foundation. Second, even a proper petitioner cannot ask the Court to validate acts backdated to before a person was appointed — doing so is not validation, it is time travel.

The practical lesson for our clients: private foundation governance is fragile. If you are the sole director of a family foundation, or if you are a member of a class whose membership terminates on death, you have a planning gap. We recommend reviewing your foundation's charter and bylaws to confirm (1) who becomes a member or director upon your incapacity or death, (2) whether there is a standing class of successor-eligible individuals, and (3) whether your foundation has a backup authority mechanism. These fixes are inexpensive to implement while you are alive and well. They are extremely expensive — and possibly impossible — to fix from the grave.

Edit for house style. Add firm logo, change closing language, and distribute to clients with charitable foundations, private operating foundations, or closely held nonstock 501(c)(3) structures. Not legal advice; each client situation should be reviewed individually.

FULL CASE ANALYSIS

In re *Stephen A. Marks Foundation, Inc.*

Case No.	C.A. No. 2025-0337-CDW
Date	April 16, 2026
Court	Delaware Court of Chancery
Officer	Master in Chancery Wright
Type	Letter Report (Denying Amended Petition for Instructions)
Practice	Charitable Corporations · Fiduciary Standing · DGCL §§ 204 & 205 · Estate Administration
Impact	Clarifies — first meaningful DE guidance in recent years on §205 standing for charitable nonstock corporations and on the outer limits of retroactive ratification
Exceptions	Notice of exceptions due April 27, 2026 (Chancery Rule 144(d)(2))

ISSUE

Whether the personal representative of a deceased sole-director’s estate has standing under 8 Del. C. § 205(a) to petition the Chancery Court for retroactive validation of her own unauthorized director appointment and related charitable distributions, where the underlying entity is a charitable nonstock 501(c)(3) corporation and the petitioner is neither a director, officer, stockholder, beneficial owner, nor member of the foundation.

HOLDING

Petition denied. The petitioner failed on two independent grounds: (i) she does not fit within any of the six categories of persons granted standing to petition under §205(a), and (ii) even if she had standing, §205 does not authorize the Court to validate acts retroactive to a date earlier than the defective act itself.

KEY REASONING — ON STANDING

Section 205(a) permits six categories of petitioners: the corporation itself, successors, current directors, current stockholders (including beneficial owners), record or beneficial owners at the time of the defective act, and “any other person claiming to be substantially and adversely affected by a putative ratification pursuant to Section 204.” For stock corporations, “stockholder” covers the field. For nonstock corporations, the analogue is “member.” Relying on *Wier v. Howard Hughes Medical Institute*, 407 A.2d 1051 (Del. Ch. 1979), the Master held that membership in a Delaware nonstock corporation is *not inheritable*. An estate does not succeed to its decedent’s membership unless the charter expressly so provides, and the foundation’s charter did not. Personal-representative status is therefore insufficient to confer §205 standing.

KEY REASONING — ON THE OUTER LIMITS OF RATIFICATION

The petitioner sought an order that would deem her to have been appointed director on May 11, 2022 (the date of her husband’s death) — later amended to August 9, 2023 (the date of her first unauthorized grant). Drawing on *Numoda*, 2015 WL 402265 (Del. Ch.), *Applied Energetics, Inc. v. Farley*, 239 A.3d 409 (Del. Ch. 2020), and *Knott Partners, L.P. v. Boudett*, 2023 WL 4276912 (Del. Ch.), the Master reaffirmed that ratification under §§ 204 and 205 cannot backdate an act to a date earlier than the date on which the person with ratifying authority acquired that authority. In the Master’s memorable phrase, doing so “would not be validation, it would be time travel.”

KEY REASONING — ON THE DELAWARE ATTORNEY GENERAL’S ROLE

The DE DOJ appeared through Marion M. Quirk as *parens patriae* for the foundation’s charitable beneficiaries, consistent with *Oberly v. Kirby*, 592 A.2d 445, 467-68 (Del. 1991). The AG’s participation is a reminder that Delaware charitable corporations are not purely private matters; the State has standing to participate in any matter affecting charitable assets, and practitioners should expect the AG to appear whenever charitable-foundation governance is at issue.

FOOTNOTE 48 — THE PRACTICAL WORKAROUND

The Master did not leave the petitioner without a path forward. The Court explicitly flagged that a party with standing (for example, a sole remaining director-nominee under a charter-specified successor mechanism, or the AG under *parens patriae*) could petition for prospective appointment, and once a validly-appointed board exists, that board could then use §204 to ratify the 2023 grants as of the date they occurred. The time-travel bar applies to the ratifying authority’s appointment date, not to the ratified act.

PRACTITIONER AUDIT CHECKLIST

For every *charitable nonstock* on your roster

This opinion tees up a narrow but important audit engagement. Run the five steps below on every Delaware charitable nonstock corporation in the file room before year-end. The first three steps are inexpensive on a healthy foundation; the last two are expensive on a foundation already in a leadership gap.

- 1 Confirm director succession. Does the charter specify who becomes a director if the sole director dies? If not — and many founder-formed foundations say nothing — the foundation has a potential governance gap the moment the founder loses capacity.
- 2 Confirm who the members are. Is there a class of members distinct from the directors? If yes, is membership inheritable? If membership is not inheritable (which is the default under *Wier*), there is a hidden standing gap the charter should address before it becomes the next *Marks Foundation*.
- 3 Recommend a standby director protocol. Many private foundations benefit from naming a “successor director” in the bylaws (a family member, trusted advisor, or institutional trustee) whose appointment takes effect automatically upon the founder’s death or incapacity, rather than requiring anyone to petition Chancery.
- 4 Document the protocol in the client’s estate plan. The successor-director mechanism should be mirrored in the client’s broader estate documents so the personal representative is on notice of the structure and does not, in good faith, step in and start making grants the way Mrs. Marks did.
- 5 Budget for correction costs. If a client’s foundation is already in a post-death leadership gap, the path forward is (a) engage the DE AG early, (b) petition for prospective appointment, (c) once appointed, use §204 to ratify prior defective acts from the date they occurred. This is costlier and slower than prevention, but it is the cleanest available path.

DOCTRINAL CONTEXT

The *citations* behind the rule

DGCL § 204 · Corporate self-help ratification mechanism for defective corporate acts.

DGCL § 205 · Chancery's validation authority when §204 cannot complete the cure or when confirmation is sought.

8 Del. C. § 114 · Title 8 applies to nonstock corporations unless context otherwise requires; the §§ 204/205 machinery applies to nonstock and charitable corporations with statutorily-defined analogues (members replace stockholders).

Wier v. Howard Hughes Medical Inst., 407 A.2d 1051 (Del. Ch. 1979) · Membership in a nonstock corporation is personal and not inheritable absent charter provision.

Oberly v. Kirby, 592 A.2d 445 (Del. 1991) · Foundational statement of the Delaware AG's *parens patriae* standing over charitable assets.

Numoda, 2015 WL 402265 · *Applied Energetics, Inc. v. Farley*, 239 A.3d 409 (Del. Ch. 2020) · *Knott Partners, L.P. v. Boudett*, 2023 WL 4276912 (Del. Ch. 2023) — together establish the rule that ratification cannot predate the ratifying authority's appointment.

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